

## Office of the Governor

March 15, 2005

Bureau of Land Management  
Rawlins Field Office  
Attention: John Spehar, Project Manager  
P.O. Box 2407  
Rawlins, WY 82301

Dear Mr. Spehar:

Thank you for the opportunity to comment on the Draft Environmental Impact Statement for the Rawlins Field Office Resource Management Plan Revision (DEIS). The State of Wyoming has appreciated its opportunity to participate in the process as a Cooperating Agency and looks forward to continuing forward in this role through the completion of the final Resource Management Plan (RMP). For my part, I appreciate the time and energy invested by all participants in the development of the DEIS.

I am astounded by the complexity of resource protections and diversity of uses that must be advanced through the current planning effort. Allowing for the development of rich mineral resources while still protecting the fragile ecosystems found throughout the Field Office area is an extremely difficult proposition. This said, my overarching concern is that the DEIS neither provides focused direction nor sufficiently describes the desired future condition. To remedy this shortcoming, the final plan should be constructed to provide definite land allocations and clear goals.

Direction and clarity are essential characteristics of any plan and are especially important where a diverse group of interests must be navigated. With the Rawlins RMP revision, we must provide the developer, conservationist and average citizen a clear, defined and mutually understood picture of what they can expect to happen on the ground. If you as the decision maker and we as cooperators fall short in this effort, the situation will unravel and will no doubt result in protracted litigation. In short, people want certainty and clarity and, if they have to, they'll sue to get them. And, while lawsuits are regrettably commonplace and inevitable, what we must defend against is an injunction which will effectively halt most federal, state and private activity on federal lands.

To explain further, this RMP will be in place for 15-20 years. During this time, the lion's share of the known energy reserves in the Field Area will be leased and likely developed. Legally, injunctions are only appropriate in the face of irreversible or irretrievable impacts to resources. Accordingly, an injunction would only be appropriate where the management direction provided in the RMP is so vague that it does not provide adequate assurances that the Field Office can manage the resource so the impacts are not irreversible or irretrievable.

I understand that there is some concern that an overly specific RMP will require the BLM to conduct additional analysis, in the form of an RMP amendment, in the future. In my view, a plan amendment, while cumbersome, is far preferable to an injunction, and is in line with the clear intent of the National Environmental Policy Act. Should new knowledge, information, or technology become known, and a change in plan specifics become desired or required, a plan amendment is appropriate to fully disclose the environmental, economic and social impacts of the proposed changes.

We continue to move forward with a quickening pace of development, without considering the breadth of impacts that attend the development. Such a lack of precision is dangerous when there are no "do-overs" to full-field development. The current RMP seems to perpetuate the past scenario of consuming the "environmental increment" on the front end, and then requiring parties to work feverishly for the remainder of the life of the planning document to mitigate our initial missteps. I am committed to responsible development, but we must be deliberate in how we proceed. By being mindful upfront, we allow the full development potential of the field to be realized, while still providing for adherence to sound environmental principles and the law.

In addition, the Rawlins RMP is the first in a series of similar planning efforts being undertaken throughout the state, and I believe that it is essential to set a high bar for expected future achievement. Such a "standard-setting" document must be clear, concise and farsighted. In particular, the desired future condition, embodied in the objectives, should "have established timeframes, as appropriate, for achievement" and should be "quantifiable and measurable." (See H-1601-1 Land Use Planning Handbook, p. II-3.) With refined objectives and a cogent picture of where we want to be in 15 years, the management allocations and actions can be crafted so as to make achievement of the desired future condition a reality.

I have little doubt that you will find the above paragraph no more than a recital of the basics of land use planning. I repeat these more elementary notions of planning to underscore my greatest concern with the DEIS: the lack of specific direction. This includes the absence of defined, desired future conditions and extends to the wording of the management allocations and actions set forth in Chapter 2 of the DEIS. While somewhat comical and clearly a typographical error, the reference to "the life history requirements of desired fishes" in the Glossary definition of 'desired future condition,' is reflective of the overall lack of clear objectives in the DEIS.

Specific direction relative to implementation and monitoring is also lacking. For example, the term "intensively managed" is used extensively in the document. Unfortunately, little guidance is provided or delineated to give any assurance or understanding of what will actually happen on the ground as a result of this "intensive management" or how conflicts in use may be decided. What guidance is provided in the Glossary relative to "intensive management" does not provide site-specific criteria for what actions will be taken under the differing circumstances that will no doubt present themselves in the highly varied and unique landscapes that exist within the Rawlins Field Office. In the end, all stakeholders in the plan desire a level of certainty for actions that will take place in the RMP area over the next 15-20 years; this plan does little to meet a level of predictability and certainty that such a long tenured document should clearly offer.

Beyond this overall need for specificity, the following represent particular thoughts and concerns relative to the DEIS:

Ferris Mountain and Adobe Town:

I support the decision to protect the Ferris Mountain fringe area.

With regard to Adobe Town, I recognize that there are existing leases in this area that must be honored or bought out. The political will of the BLM to buy out these leases is slight, so I ask that the existing leases be managed to protect the wilderness qualities as much as possible and that no additional leases be let in this area in the immediate future. Presently, the impacts of developing the Adobe Town fringe are such that I cannot advocate additional leasing. With the advent of new technology, which allows for exploration and development without impacting surface uses and values, leasing and development of the Adobe Town fringe may become more acceptable. The RMP should better describe the Adobe Town fringe area surface disturbance limitations, rather than providing the more neutral, bland, but universal 'intensively managed.' The Adobe Town WSA and fringe area comprise too distinct an environment to require less.

Overlapping Crucial Winter Range:

I understand that the overlapping crucial winter range controlled surface stipulation was to be dropped in the plan. I believe, after visiting with Wyoming Game and Fish Department officials, that this overlapping crucial winter range controlled surface stipulation should be included in the final plan and used vigorously. In addition, Wyoming Game and Fish officials should be consulted when mitigation plans are prepared prior to drilling.

Checkerboard:

I would ask that the BLM create a special management area for the checkerboard area. The BLM should neither restrict activities on private land nor place additional burdens on



the surface owner. This will take an increased level of coordination with the affected landowners and lessees. Special management considerations within the checkerboard should include, but not necessarily be limited to: grazing, access, oil and gas development, cultural resource protection and private property rights.

High Energy Potential Fields:

In those areas of high energy development potential, there should be special consideration for the efficient and orderly development of the resource. To explain, in those areas of extreme importance to wildlife, the area is set aside for special management for the maximization of the wildlife resource. This should also be the practice in those areas of high energy potential where it is feasible and practicable relative to other resource values.

Lease Strategy and Unitization:

Because of the complicated nature of overlapping and conflicting resources and resource uses, I ask that the BLM consider relevant language from New Mexico, specifically from the RMP Amendment for Fluid Minerals Leasing and Development in Sierra and Otero Counties. In this Amendment, the BLM required new lessees to form exploratory units prior to commencing drilling activity. This special protection measure allowed the BLM to manage the surface in an orderly way, as well as to control the rate of reservoir development. This concept should be explored as a potential option in the Rawlins Field Office area.

Best Management Practices – Wildlife:

The Wyoming Game and Fish Department reviewed the Best Management Practices (BMPs) that are included in the DEIS and found that the array of recommended wildlife BMPs is excellent. The problem however, is that there is no certainty as to when, where or if they will be applied. Although the word "intensively managed" is mentioned fifty-four times in the document and defined in the Glossary, as discussed previously, there are very few assurances as to how the BMPs will actually be applied.

Of specific importance in this regard, the DEIS states that Special Management Areas (SMAs) are to be "intensively managed" for the specified objectives (wildlife habitat, raptor concentration, etc.). Unfortunately, there are no clear or measurable objectives to direct the specified management and thus achieve the specified objective. One can only 'assume' that management will be for the benefit of the plants and/or animals located in these areas, yet there is no prescribed direction. BLM Manual H-1601-1 states plainly that a "land use plan must express desired outcomes in terms of specific goals, standards and objectives." The final RMP should contain these items.

Best Management Practices – Water, Air and Soil:

DEQ strongly recommends that the BLM coordinate with its various operating Divisions to update the list of water, air and soil BMPs. I concur. With the proposed level of development within the Field Office, the most up-to-date information and technology should be incorporated.

Air Quality:

The Wyoming Department of Environmental Quality Air Quality Division has notified my office that it has responded to BLM's request for cooperator comments at least seven times. Each time it has found that its comments had not been addressed, with the same errors being repeatedly carried forward to the next revision of the document. The Division's experience is less than satisfying for the agency and less than ideal for a planning process so heavily dependent on a sound air quality analysis. I would ask that the Division's final comments be addressed either by inclusion or with a full explanation stating the reasons for not incorporating the comments into the document.

Cooperator Relationship:

The experience of the Air Quality Division exemplifies a broader concern. Many cooperators felt that there was a predetermined outcome for the preferred alternative and that, relative to the final EIS, no involvement or information by any cooperator was going to change the outcome. This is disconcerting and flies in the face of public and cooperator participation. Although I recognize that the final decision is the responsibility of the BLM, I believe that important information was and is being brought to the BLM's attention throughout the plan revision process. If the information were being adequately incorporated, surely the direction of the preferred alternative would have been altered. But, to date, we have seen little shift in the preferred alternative. If competing resource uses and values are to be addressed in a combination that will best meet the present and future needs of Wyoming residents and the American people, the input of state and local cooperators must be encouraged, liberally considered and included in the analysis.

As with the request specifically made with regard to the Air Quality section, it is my request that between draft and final, cooperators' comments be fully explored for inclusion in the final document, with a full explanation attending any decision to not include a cooperator's preference.

It is my understanding that at a recent meeting between the State BLM office and my office, there was common agreement to work on the conflicts and concerns between draft and final with the cooperators. I appreciate the BLM's sincere response to cooperator concerns.

Wind Energy:

The Rawlins Field Office has excellent wind energy potential, yet the BLM eliminated significant areas from consideration for wind energy development. I ask that you

reconsider your decision and maximize wind energy development potential to help diversify our energy reserves.

In the siting of any wind energy project, reasonable consideration should be made relative to sage grouse nesting and brood-rearing habitats, VRM class designations and other resource uses affected by such projects. The offsite mitigation instruction memorandum, dated February 1, 2005, might provide some guidance in this regard.

Cultural:

The State Historical Protection Office has indicated that the two-mile VRM Class II setting analysis may not be appropriate in all locations for all project types. The BLM should work to ensure some degree of flexibility to address variable topography, vegetation and coloration along the trails and manage for setting, when it is determined to contribute to the eligibility of the site.

Well Numbers/Acres Disturbed:

Discussions with various state agencies have indicated that the projected number of wells in the preferred alternative is not adequate to cover the most current projected level of drilling in the Planning Area. It has been suggested by the Wyoming Oil and Gas Conservation Commission that the number of well locations be identified or perhaps acres of total allowed disturbance to determine total development. Regardless, an estimated number of wells must be evaluated to determine air quality impacts.

Impaired Water Bodies:

The Wyoming Department of Environmental Quality, Water Quality Division has indicated that there are several impaired water bodies in the Rawlins RMP area. Several of these areas are within the expected area for Coal Bed Natural Gas development. Without proper management, energy development could exacerbate the existing water quality difficulties that persist in the Field Office. Thus, any impaired water bodies should be managed to meet specific management objectives, which are identified and codified in the RMP, through special management recommendations, also specified in the RMP.

Class I Waters/Salinity Control:

The RMP did not discuss management in Class I waters, such as the 'Miracle Mile,' in order to ensure that these watersheds will meet Class I standards. Further, no defined practices or monitoring plans are set forth in the DEIS to guide the control of salinity for watersheds in the Colorado River system. The final RMP should incorporate management and monitoring actions to protect the quality of Class I waters and control salinity.



High Savery Dam:

The Wyoming Water Development Commission is concerned that High Savery Dam continue to be managed per the existing Memorandum of Understanding it holds with the BLM. Specifically, mineral entry should not be allowed in those areas covered by the MOU. The MOU should be honored and adhered to by and through the DEIS.

Socioeconomic Input:

The socioeconomic analysis provided in the document quite adequately represented the benefits associated with oil and gas development within the Planning Area. While I most certainly concur that oil and gas provides many benefits to the area and state, the document did not adequately analyze the impacts to communities affected by the development. The final analysis should, at a minimum, consider the following: infrastructure, medical and emergency services, social services, housing, and educational needs.

Wild Horses:

The RMP language referencing wild horses does not comport with the Consent Decree entered into by and between the State and BLM. In fact, the provided language essentially justifies the elimination of 30,000 AUMs because of increased wild horse numbers. Clearly, the State cannot abide any such reduction. The final RMP must follow and provide management in accordance with the Consent Decree.

Range of Alternatives:

I was disappointed that the BLM did not consider the Western Heritage Alternative in the DEIS. This Alternative was an example of a grassroots effort to participate in the planning process. The BLM might not have liked the proposed direction of the Western Heritage Alternative - I have my own concerns about it and do not advocate for it to be the preferred alternative - but the National Environmental Policy Act is not about what we do or do not like. Rather it is about displaying a true range of alternatives to address the issues raised during the planning process. The Western Heritage Alternative should be included in the final analysis to broaden the full range of alternatives. Again, I would not suggest it become the preferred alternative. Such an inclusion is especially important in light of the recent legal decision from Montana which characterized the BLM's failure to analyze a phased development alternative as rendering the EIS inadequate.

Activity Working Groups and Offsite Mitigation:

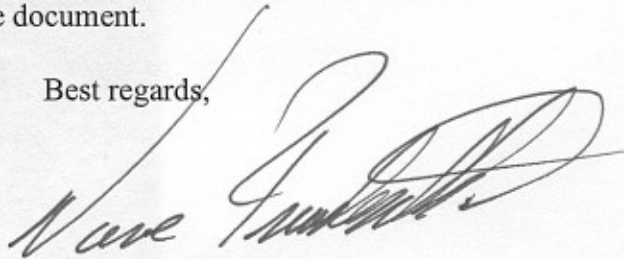
I very much appreciated the inclusion of language that allows cooperators to continue to work with the BLM in future activity level planning. This language should be carried through in the final document. Furthermore, I appreciate the insertion of the offsite

mitigation concept. I trust that the language will be adjusted to align with the new instruction memorandum.

In the course of my career, seldom have I had the opportunity to recall or make use of my formal instruction in Greek mythology. Pardoning my departure from the traditional comment structure, I contend that the Greek mythological character, Proteus, encapsulates the true nature of this DEIS. Proteus was an ancient sea god who had the ability to change his shape and form at will. With the DEIS, the BLM has crafted a document that provides maximum flexibility with little or no accountability – it can change its shape and form at the will of the BLM. While I understand that a land use plan is meant to provide a “30,000 foot” perspective-type management direction the document must still chart a plotted course and provide necessary assurances regarding the desired future condition for every resource. This direction should include specific goals, standards, objectives and restrictions. Thus, I ask that you refrain from the temptation to demand an overly flexible management structure in favor of a less ‘protean’ document.

Thank you again for the opportunity to have an open and frank dialogue about the Great Divide Resource Management Plan. I look forward to a final plan which will provide direction and certainty to Wyoming residents and industries. For our part, the state’s cooperators are working on specific language for your consideration in the final document. I request that a meeting be scheduled wherein the State can present its proposed language and further discuss the document.

Best regards,

A handwritten signature in dark ink, appearing to read "Dave Freudenthal", written over a light blue rectangular stamp.

Dave Freudenthal  
Governor

DF:MF:RL:pjb